



COUNTY OF LOS ANGELES
OFFICE OF THE COUNTY COUNSEL

648 KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012-2713

JOHN F. KRATTLI
County Counsel

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TELEPHONE
(213) 974-1801
FACSIMILE
(213) 626-7446
TDD
(213) 633-0901

REVISED

TO: SUPERVISOR ZEV YAROSLAVSKY, Chairman
SUPERVISOR GLORIA MOLINA
SUPERVISOR MARK RIDLEY-THOMAS
SUPERVISOR DON KNABE
SUPERVISOR MICHAEL D. ANTONOVICH

FROM: JOHN F. KRATTLI *John F. Krattli*
County Counsel

SACHI A. HAMAN *Sachi A. Haman*
Executive Officer

DEAN C. LOGAN *Dean C. Logan*
Registrar-Recorder/County Clerk

RE: **Motion of June 6, 2012 by Supervisor Don Knabe Regarding
Ordinance Ensuring Transparency in the Property Tax Arena**

Purpose

On June 6, your Board directed the Office of County Counsel, Executive Officer and Registrar-Recorder/County Clerk ("RRCC") to draft language for a new ordinance that ensures increased transparency in the property tax arena in the County of Los Angeles and prohibits campaign contributions from tax agents who have business before the Assessor, Assessor's staff, Assessment Appeals Board and Assessment Hearing Officers. This memorandum is to update your Board on the work done by our three offices in this regard.

Background

In Los Angeles County, tax agents are paid to represent and advocate for property owners before our County Assessor and his staff, the Assessment Appeals Board, and Assessment Appeal Hearing Officers. Due to the current criminal investigation of the County Assessor, which includes an inquiry as to whether the Assessor accepted campaign contributions from tax agents in exchange for reduced property value assessments for their clients, your Board asked for two ordinances to be drafted: one that ensures increased transparency in the property tax arena in the County of Los Angeles and; one that prohibits campaign contributions to the Assessor from tax agents who have business before the Assessor, Assessor's staff, Assessment Appeals Board and Assessment Hearing Officers.

Our three offices have examined the many issues that these ordinances would raise and have looked closely at several pieces of legislation impacting this issue that are currently pending in Sacramento.

Legislation Update

Two bills, pertaining to the regulation of tax agents, were recently before the California Legislature – AB 2183 (Assembly Member Smyth) and AB 404 (Assembly Member Gatto).

AB 2183 would require a tax agent wishing to represent a taxpayer before the assessor, a county board of equalization, or an assessment appeals board, to register with a registering jurisdiction (county) prior to representing a taxpayer before that jurisdiction. This bill also sets forth a number of other requirements for registering jurisdictions to implement when establishing such a tax agent registration process. Proposed amendments to AB 2183 would require tax agents to register statewide with the California State Board of Equalization instead of each county. AB 2183 was recently pulled by the author and no longer appears viable.

AB 404, as amended on August 21, 2012, requires any county that regulates lobbying before the board of supervisors to adopt an ordinance and impose a reasonable necessary fee to regulate property tax agents and firms representing clients before the county assessor's office for compensation. The bill further requires tax agents and firms to annually register with the executive office of the board of supervisors and to file quarterly reports with the Assessor. Lastly, the bill requires that a county ordinance must further ban campaign contributions

from tax agents to an elected county official or a candidate for a county office in that county.

This bill does not apply to property owners. The bill does, however, treat attorneys who represent property owners similarly to tax agents, and would not prohibit either tax agents or attorneys from receiving a contingency fee for their services. Moreover, AB 404 contains no enforcement mechanism and, even if it did, could raise serious due process issues affecting the taxpayer in appeal hearings. Without enforcement provisions, then, this bill does nothing to add transparency to the process and places the County in the position of merely collecting fees, the cost of which is borne by the taxpayer.

Numerous organizations are opposed to AB 404 including: California Association of Clerks and Election Officials; California Alliance of Taxpayer Advocates; CalCPA; California Retailers Association; and, the Howard Jarvis Taxpayers Association. The bill was passed in the Assembly, and on August 20, 2012, it was approved by the Senate Appropriations Committee and, as of this writing, is on the Senate Third Reading File. This bill does not assist the Board in establishing greater transparency, it negatively impacts taxpayer costs of representation, and it also creates a large workload and impacts costs for both the Executive Office and Assessor.

Campaign Contributions

Because campaign contributions are protected free speech under the First Amendment, a total ban on campaign contributions to County Candidates from tax agents practicing in Los Angeles County may present constitutional concerns. Should AB 404 pass, which bans campaign contributions from tax agents who act on their clients' behalf before the assessor, the County can defend its action because it will be complying with State law, even though constitutional concerns may exist. Alternatively, should AB 404 not pass, the County could consider reasonable limits on such campaign contributions as long as the limitation advances the government's interest in preventing quid pro quo corruption or the appearance thereof, but those limits cannot be so low as to place unreasonable restrictions on speech.

It should be noted, however, that enforcement of any ordinance remains a concern as it may not legitimately impair or impact the taxpayers' due process rights in an appeal of their property tax assessment. Thus, even if an agent makes an inappropriate contribution, we most likely could not prevent them from representing the taxpayer at any assessment appeals board hearing.

At this time, we recommend delaying any decision on whether to change the County's Lobbyist Ordinance pending the outcome of AB 404.

Other Alternatives

1. Computer Systems Enhancements

Currently, the Executive Office's assessment appeal electronic system has the capability to permit staff to create a variety of reports. However, generating tailor-made, on-demand, reports to track tax agent activity is time consuming for the limited staff available.

The Executive Office recommends developing new system tools to enhance its database in order to generate regular reports on tax agent activities. These new tools would tie tax agents to their clients and provide selected information pertaining to the affected properties, including roll value, taxpayer's opinion of value, etc.

Additionally, the RRCC recommends enhancing its databases to allow for the tracking and reporting of campaign contributions made by tax agents and tax agent firms. Currently, RRCC's databases are only able to receive electronic versions of campaign statements mandated by the State. In order to determine possible campaign finance violations, a manual search is required by staff. The RRCC recommends systems enhancements that will allow for the effective electronic matching of tax agents and lobbyists in order to generate contribution reports.

Once enhancements are made to both the Executive Office and RRCC systems, matches could be made and a subsequent list generated which reflects those tax agents and tax agent firms who have made campaign contributions. This list would then be posted on the RRCC website, which would significantly address the transparency of the contributions.

2. Reporting Requirements

Another option to increase transparency is to have the RRCC issue instructions to the all campaign treasurers to specifically identify tax agents and/or tax agent firms who contribute to candidates in the appropriate "Occupation and Employer" section of their candidates' California Form 460. This will add an important measure of transparency with respect to tax agent campaign contributions to County candidates and will make the RRCC's task of tracking such contributions significantly easier.

Conclusion and Recommendations

In light of the pending legislation, which may override any conflicting County ordinance, as well as assist the County in drafting an effective ordinance, we recommend waiting for the outcome of AB 404 prior to initiating any amendments to our County Code regulating tax agents.

We would recommend that your Board do the following:

1. Direct the Office of County Counsel, Executive Officer and RRCC to work with the CEO to report back on the status of AB 404 and AB 2183, as well as other potential legislative and administrative measures to address the issues raised with respect to the Office of the Assessor and tax agents;
2. Direct the Executive Officer and Registrar-Recorder/County Clerk to begin implementing the above described computer enhancements; and
3. Direct the RRCC to work with the CEO to put any costs required for such computer enhancements into the RRCC department's supplemental budget.
4. Direct the RRCC to issue revised instructions to campaign treasurers as described above.

If you have questions concerning this matter, please contact County Counsel John Krattli, Executive Officer Sachi Hamai, or Registrar-Recorder/County Clerk, Dean Logan.

JFK:SAH:DCL

c: William T Fujioka
Chief Executive Officer

Santos Kriemann
Chief Deputy Assessor